

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 111—Sales/Use Tax—Machinery
And Equipment Exemptions

Proposed Amendment

12 CSR 10-111.060 Material Recovery Processing Plant Exemption.

PURPOSE: This rule is being amended to address the changes made to Section 144.030.2 (4) RSMo by the General Assembly. This rule does not address the purchase of electrical energy or gas whether natural, artificial, or propane, water, or other utilities subject to the provisions of section 144.030.2 (12) and (31), RSMo.

PURPOSE: Section 144.030.2(4), RSMo, exempts from taxation machinery and equipment and certain materials and supplies used to establish new, or to replace or expand existing, material recovery processing plants in this state. This rule explains the elements that must be met in order to qualify for the exemption.

(1) In general, the purchase of machinery and equipment, and the materials and supplies required solely for the operation, installation or construction of such machinery and equipment, is exempt from tax if used to establish new, or to replace or expand existing, material recovery processing plants in this state. **Motor vehicles used on highways, as defined in section 301.010, RSMo, do not qualify for this exemption.**

(2) Definition of Terms.

(A) Facility—A building or structure that is designed and used for a particular purpose.

(B) Product—An item made from raw materials or other products that has a new identity, use, and market value produced as a result of the manufacturing process.

[(A)] (C) Material recovery processing plant—A facility [which converts recovered] that has as its primary purpose the recovery of materials into a [new] useable product[, or [to] a different form [which] that is used in producing a new product[, and]. It includes facilities or equipment used exclusively for the collection of recovered materials for delivery to a material recovery processing plant but does not include motor vehicles used on highways. Material recovery is not the reuse of materials within a manufacturing process or the use of a product previously recovered. A facility that uses materials that previously have been recovered is not a material recovery processing plant.

[(B)] (D) Recovered materials—[Those materials] Items that have been diverted or removed from the solid waste stream for sale, use, reuse or recycling, whether or not [they] the items require subsequent separation and processing.

(E) Recovery—The process of obtaining usable substances from unusable sources.

(F) Solid waste—Garbage, refuse and other discarded materials including, but not limited to, solid and semisolid waste materials resulting from industrial, commercial, agricultural, governmental and domestic activities.

(G) Supplies—Tangible personal property consumed in the installation, construction or operation of machinery and equipment. The term supplies does not include fuel.

(H) Waste—Materials, other than raw materials, which have been used for their original intended purpose or use.

(3) Basic Application of Exemption.

(A) Machinery and equipment for new, or to replace or expand existing, material recovery processing plant—Purchases of machinery and equipment used to establish new, or to expand existing, material recovery processing plants in this state are not subject to tax. Purchases of the materials and supplies required solely for the operation, installation or construction of such machinery and equipment are not subject to tax. A facility qualifies as a material recovery processing plant when the primary purpose is the recovery of materials into a useable product or a different form that is used in producing a new product.

“Primary purpose” is more than fifty percent (50%) of the activity of the facility.

(B) New, replacement or expanded plant—Machinery and equipment are exempt if used to establish a new, or replace or expand an existing, material recovery processing plant. Materials and supplies required solely for the operation, installation or construction of machinery and equipment used in establishing a new plant, or in replacing or expanding an existing plant are exempt. If the facility’s primary purpose is producing a new product from materials that are not recovered materials, the facility is not a material recovery processing plant. If the facility’s primary purpose is producing a new product from materials that are made from previously recovered materials, the facility is not a material recovery processing plant.

(C) A facility or equipment that is used exclusively for the collection of recovered materials for delivery to a material recovery processing plant is exempt. This does not include motor vehicles used on highways.

(4) Examples.

(A) A new company purchases machinery and equipment to retread old tires. The company purchases old tires and with the use of the new machinery and equipment, it produces retread tires for sale. The machinery and equipment may be purchased under the material recovery processing plant exemption.

(B) *[A taxpayer recycles fuel. It processes both solid and liquid waste materials for use as a fuel in its cement manufacturing operation. The taxpayer uses shredders and pulverizers to grind the solid waste materials into sizes appropriate for processing. The taxpayer’s mobile and conveyor systems are used to transport the solid and liquid wastes to different processes performed on the materials in taxpayer’s facility. The fuel recycling facility would qualify as a*

material recovery processing plant because it converts recovered materials, solid and liquid waste materials, into a new product, fuels, that are then used to manufacture a new product, cement.] **A taxpayer acquires and processes solid waste for use as a fuel in its cement manufacturing operation. The taxpayer has a separate facility that uses shredders and pulverizers to grind the solid waste into sizes appropriate for use in the cement manufacturing operation. The separate facility, but not the cement manufacturing operation, qualifies for the material recovery processing plant exemption because the primary purpose of the separate facility is to convert recovered materials into a useable product.**

(C) Assuming the same facts as in example (4)(B), the taxpayer purchases lubricants to operate its [*machinery and equipment*] **shredders and pulverizers**. Because the lubricants are required solely for the operation of the [*machinery and equipment, they are not subject to tax*] **shredders and pulverizers in a material recovery processing plant, they qualify for the material recovery processing plant exemption.**

(D) [*Taxpayer does not operate a material recovery processing plant but operates a facility used exclusively for the collection of recovered materials for delivery to a material recovery processing plant.*] A taxpayer operates a facility used exclusively for the collection of recovered materials for delivery to a material recovery processing plant. The [*T*]taxpayer purchases storage bins, conveyors and a special truck for hauling [*waste materials*] to and from its facility. The storage bins and conveyors [*would be*] **are** exempt from tax. The special truck [*would be considered*] **is** a motor vehicle [*pursuant to section 301.010, RSMo, and would be subject to tax.*] **used on highways and does not qualify for the material recovery processing plant exemption.**

(E) A taxpayer operates a recycling business that purchases aluminum, paper and other used consumer products to be bundled and then sold to facilities [] that use them as raw materials to produce new and different products. [A] **The** taxpayer purchases loaders, baling machines and crushing equipment to prepare the materials for sale and shipping. The loaders push the materials into the balers, which compress the recovered materials for shipping. Because the taxpayer is collecting [*recyclable*] **recovered** materials [*and converts them into a different form*], which [*is*] **are** then used to produce new products, the [*taxpayer's operation would qualify as a material recovery processing plant. The*] loaders, baling machines and crushing equipment [*would*] qualify for the material recovery processing plant exemption [*if they were purchased and used to establish a new, or to replace or expand an existing plant*].

(F) **A taxpayer operates a facility used exclusively for the collection of used motor oil for delivery to a material recovery processing plant. The taxpayer purchases storage tanks, pumps and a special truck for hauling the oil to and from its facility. The storage tanks and pumps are exempt from tax. The special truck is a motor vehicle used on highways and does not qualify for the material recovery processing plant exemption and is therefore subject to tax.**

(G) A manufacturer makes metal pipe. The manufacturing process creates metal scrap, which the taxpayer collects and reuses in its manufacturing process. The pipe manufacturer is not a material recovery processing plant because the metal scrap is reused in the same manufacturing process.

(H) A manufacturer makes PVC pipe. The manufacturing process creates scrap that the pipe manufacturer collects and sells to a recycling company. The recycling company grinds and pulverizes the pipe for sale to others that use the processed scrap to make other products. The pipe manufacturer's facility is not a material recovery processing plant because the primary purpose of the plant is not material recovery. The recycling company is a material recovery processing plant because its primary purpose is to convert recovered materials into a different form for use in making new products.

(I) Same facts as (H). To keep its plant clean, the pipe manufacturer uses equipment to collect all scrap. After the scrap is collected in the plant, it is separated, crushed, bundled, and delivered to the recycler. The collection equipment is subject to tax because it is not used exclusively for preparing the scrap for delivery to the recycler. The equipment used to separate, crush, and bundle the scrap does qualify for the material recovery processing plant exemption because it is used exclusively to prepare the scrap for delivery to the recycler.

(J) A pressboard manufacturer acquires sawdust from a sawmill to use in its manufacturing process. The sawdust has not been altered or recycled. The pressboard manufacturer converts the sawdust into pressboard. The pressboard manufacturer is a material recovery processing plant because the sawdust is a recovered material.

(K) The pressboard manufacturer sells its pressboard to a furniture manufacturer. The furniture manufacturer makes computer stands out of the pressboard. Although the pressboard is made from recovered materials, the furniture manufacturer is not a material recovery processing plant because its primary purpose is the manufacture of computer stands, not the recovery of materials into a useable product.

(L) A window manufacturer purchases aluminum sheets for use in its manufacturing process. The aluminum sheets are made from 100 percent (100%) recycled aluminum. The window manufacturer is not a material recovery processing plant because it is only using materials that have previously been recovered.

(M) A manufacturer uses charcoal to purify water as part of its manufacturing process. The manufacturer must change the charcoal periodically because the charcoal no longer purifies the water after it has been used for a while. The manufacturer contracts with a third party to revitalize the used charcoal using a chemical process. The third party returns the revitalized charcoal to the manufacturer, which then reuses it. The third party is a material recovery processing plant because the charcoal was diverted from the solid waste stream.

(N) A chicken processor processes live chickens into chicken parts for retail sales. The chicken processor uses the entrails and other remaining parts to make dog food. The processor is not a material recovery processing plant because the chicken parts are being used for their intended purpose and therefore are not being diverted from the solid waste stream.

(O) A flour manufacturer mills hard wheat into its primary product of flour and coproduct of wheat midds. The flour is sold to a pasta manufacturer. The wheat midds are sold to an animal feed manufacturer. The flour manufacturer is not a material recovery processing plant. The animal feed manufacturer is not a material recovery processing plant because the wheat midds are being used for their intended purpose.

AUTHORITY: sections 144.270 and 144.705, RSMo 1994. Original rule filed Nov. 18, 1999, effective June 30, 2000.*

**Original authority: 144.270, RSMo 1939, amended 1941, 1943, 1945,01947,01955,01961, and 144.705, RSMo 1959.*

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: *This proposed rule will not cost private entities more than \$500 in the aggregate*

NOTICE TO SUBMIT COMMENTS: *Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. To be considered comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

Galamet, Inc. v. Director of Revenue, 915

S.W.2d 331 (Mo. banc 1996). The Missouri Supreme Court held that a scrap metal reprocessor was engaged in manufacturing, not recycling. Manufacturing consists of the alteration or physical change of an object or material in such a way that produces an article with a use, identity, and value different from the use, identity, and value of the original.

**FISCAL NOTE
PUBLIC COST**

RULE NUMBER

Rule Number and Name:	10-111.060 Material Recovery Processing Plant Exemption
Type of Rulemaking:	Proposed Rule/Amendment

SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimate Cost of Compliance in the Aggregate.
Missouri Department of Revenue	\$0.00

ASSUMPTIONS

The rule does not change existing practice.

**FISCAL NOTE
PRIVATE COST**

RULE NUMBER

Rule Number and Name:	10-111.060 Material Recovery Processing Plant Exemption
Type of Rulemaking:	Proposed Rule/Amendment

SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by adoption of the proposed rule	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
	Vendors	\$0.00

ASSUMPTIONS

The rule does not change existing practice.

Small Business Impact Statement

Proposed Rule 12 CSR 10-111.060 Material Recovery Processing Plant Exemption

1. Rule impacts all small businesses making sales of tangible personal property. The rule does not impose any new requirements on small businesses and is a consolidation of already published rules.
2. Any retail establishment making sales of tangible personal property under this rule will be required to prepare and file a sales tax return for each reporting period.
3. The retail establishment will be required to collect the appropriate amount of tax on its sale of tangible personal property, maintain records of those transactions, report sales on an annual, quarterly or monthly basis and remit the tax at the time of reporting.
4. There are no monetary costs above and beyond printing and distributing returns and processing those returns as filed by businesses as documented in the public cost fiscal note. There are no monetary benefits to the Department of Revenue from this rule. There are no monetary costs or benefits to other state agencies from this rule.
5. Because the effort to file returns is minimal, no additional efforts have been made to reduce such costs to small businesses.
6. The rule has been distributed on a list serve that is accessible to small business advocates. Also, the rule does not impose any new requirements on small businesses and is consolidation of already published rules.
7. Not applicable.